



INTERIOR BOARD OF INDIAN APPEALS

Hendry County, Florida v. Eastern Regional Director,
Bureau of Indian Affairs

40 IBIA 135 (10/19/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

HENDRY COUNTY, FLORIDA,
Appellant,

v.

EASTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee.

: Order Docketing and
: Dismissing Appeal
:
:
: Docket No. IBIA 04-146-A
:
:
: October 19, 2004

On August 23, 2004, the Board of Indian Appeals (Board) received a letter from Hendry County, Florida (County), through counsel, dated August 16, 2004. The letter enclosed a notice of appeal with a certificate of service dated December 19, 2003. The notice of appeal seeks review of a November 21, 2003, decision of the Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA). That decision approved the acquisition by the United States, in trust for the Miccosukee Indian Tribe of Florida, of 2,435.94 acres, more or less, referred to as the Sherrod Ranch, and located in Hendry County, Florida. The Board dismisses this appeal as untimely.

This matter first came to the Board's attention through an inquiry from the Office of the Regional Director on or about July 23, 2004, concerning the status of the County's purported appeal. The Board informed the BIA by letter dated July 30, 2004, which was copied to the County and other interested parties, that the Board had no record of ever having received a notice of appeal from the County. The County's August 16 letter to the Board was sent in response to the July 30 letter. The County stated that the original notice of appeal was filed with the Assistant Secretary - Indian Affairs (Assistant Secretary), but the County gave no indication that it had previously attempted to send a copy to the Board.

A notice of appeal from a decision of a BIA Regional Director must be filed with the Board within 30 days after receipt by the appellant of the decision from which the appeal is taken. 43 C.F.R. § 4.332(a). Although the Assistant Secretary - Indian Affairs is authorized to assume jurisdiction over an appeal within 20 days after its receipt by the Board, appellants do not have a general right to appeal directly to the Assistant Secretary from a decision made by a BIA regional director. See 25 C.F.R. § 2.20(c). A notice of appeal not timely filed with the Board must be dismissed for lack of jurisdiction. 43 C.F.R. § 4.332(a).

In the present case, although the Regional Director's decision correctly advised the County that it must send any appeal to the Board, it incorrectly provided the County with an outdated address for the Board. In other cases, the Board has held that when an appellant has been given, and complies with, incorrect appeal instructions, an appeal may be accepted as timely. See, e.g., Pretty Paint v. Rocky Mountain Regional Director, 38 IBIA 177, 178 (2002); Eastern Cherokee Tribal Community Services Committee v. Acting Eastern Area Director, 30 IBIA 1, 2 n.3 (1996). Because it was possible that the County had complied with the Regional Director's incorrect appeal instructions, the Board issued an order allowing the County an opportunity to demonstrate, on or before September 13, 2004, that it had timely mailed its notice of appeal to the Board. Proof of timely mailing to the Board's former address would have been acceptable, under the facts of this case. The Board's order specifically advised the County that it had the burden of proof to show that the notice was timely mailed to the Board. Order at 2 (Aug. 30, 2004) (citing American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120 (1994)).

The Board has received no response from the County, and the Board thus concludes that the County has failed to carry its burden to prove that its appeal is timely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for lack of jurisdiction.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge